

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION**

BILLY J. KAIN, JR.
ADC #83093

PLAINTIFF

v.

1:18cv00047-KGB-JJV

MARTY HEARYMAN, Doctor,
North Central Unit, ADC; *et al.*

DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge Kristine G. Baker. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.

3. The details of any testimony desired to be introduced at the new hearing in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the new hearing.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing. Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

Billy J. Kain, Jr. (“Plaintiff”) is incarcerated at the North Central Unit of the Arkansas Department of Correction (“ADC”) and brings this action *pro se* pursuant to 42 U.S.C. § 1983. (Doc. No. 2.) On July 19, 2018, I denied Plaintiff’s Application to Proceed Without Prepayment of Fees and Affidavit because he is a three-striker, as defined by 28 U.S.C. § 1915(g), who failed to demonstrate that he is currently in imminent danger of serious physical injury. (Doc. No. 3.) I ordered Plaintiff to submit the statutory filing fee of \$400.00 within twenty-one (21) days of the date of that Order and warned him the case would be dismissed if he failed to timely do so. (*Id.* at 3.)

That deadline has now passed, and Plaintiff has not paid the filing fee or otherwise responded to my July 19, 2018 Order. Accordingly, Plaintiff’s Complaint should be dismissed without prejudice. If Plaintiff wishes to proceed with this action, he may submit the \$400.00 filing fee in full with his Objections to this Recommended Disposition.

IT IS, THEREFORE, RECOMMENDED that:

1. Plaintiff’s Complaint (Doc. No. 2) be DISMISSED without prejudice.

2. The Court certify, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from any Order adopting this recommendation and the accompanying Judgment would not be taken in good faith.

DATED this 13th day of August, 2018.



JOE A. VOLPE
UNITED STATES MAGISTRATE JUDGE